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PIPER & MARBURY

L.L.P.

1200 NINETEENTH STREET, N.W.  
WASHINGTON, D.C. 20036-2430

WRITER'S DIRECT NUMBER  
(202) 861-6475  
FAX: (202) 223-2085

202-861-3900  
FAX: 202-223-2085

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: **Inquiry Concerning the Deployment of Advanced Telecommunications  
Capability - CC Docket No. 98-146**

Dear Ms. Salas:

On behalf of Transwire Communications, Inc. ("Transwire") there is transmitted herewith an original and four copies of Transwire's "Reply Comments" in the above-referenced proceeding.

A "Return Copy" of this filing is also enclosed. Please date-stamp the "Return Copy" and return it to the courier delivering this package.

If there are any questions regarding this filing, please contact the undersigned counsel.

Sincerely,



Julie A. Kaminski

/jxk  
Enclosures

cc: Attached service list  
Terry Peck  
Sophia Corona

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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

**In the Matter of )  
)  
Inquiry Concerning the Deployment of )  
Advanced Telecommunications )  
Capability to All Americans in a Reasonable )  
And Timely Fashion, and Possible Steps )  
To Accelerate Such Deployment )  
Pursuant to Section 706 of the )  
Telecommunications Act of 1996 )**

**CC Docket 98-146**

**REPLY COMMENTS OF TRANSWIRE COMMUNICATIONS, INC.**

**Randall B. Lowe  
Julie A. Kaminski  
Renée Roland Crittendon  
J. Todd Metcalf  
PIPER & MARBURY L.L.P.  
1200 Nineteenth Street, N.W.  
Washington, D.C. 20036-2430  
(202) 861-3900**

**Dated: October 8, 1998**

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**Before the  
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Washington, DC 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
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<b>To Accelerate Such Deployment</b>	)	
<b>Pursuant to Section 706 of the</b>	)	
<b>Telecommunications Act of 1996</b>	)	

**REPLY COMMENTS OF TRANSWIRE COMMUNICATIONS, INC.**

Transwire Communications, Inc. ("Transwire"), by and through counsel, hereby submits its reply comments to the Commission's Notice of Inquiry in the above-referenced proceeding concerning the deployment of advanced telecommunications capability (hereinafter the "NOI").

**I. Introduction and Summary**

Despite assertions to the contrary in their comments in this proceeding,<sup>1</sup> the incumbent local exchange carriers ("ILECs"), by virtue of their exclusive control of the local loops, are the

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<sup>1</sup> Comments of Bell Atlantic, CC Docket No. 98-146, *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, FCC 98—187 (filed September 14, 1998) ("Bell Atlantic's Comments"); Comments of BellSouth Telecommunications, Inc., CC Docket No. 98-146, *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, FCC 98—187 (filed September 14, 1998) ("BellSouth's Comments"); Comments of SBC Communications, Inc., CC Docket No. 98-146, *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, FCC 98—187 (filed September 14, 1998) ("SBC's Comments"); Comments of Ameritech, CC Docket No. 98-146, *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, FCC 98—187 (filed September 14, 1998) ("Ameritech's Comments"); Comments of U.S. West, CC Docket No. 98-146, *In the Matter*

incumbents in the advanced telecommunications services market. The copper loops comprising the “last mile” to customer’s homes are critical to provisioning wireline advanced telecommunications capability, such as that offered by Transwire. The ILECs’ ownership of those loops clearly provides an inherent advantage for the ILECs and a competitive disadvantage to competitors seeking to provide advanced services. Given the ILECs’ consistent practice of protecting their networks against entry by competitors, Transwire submits that regulation is necessary to ensure that competitors have access to the facilities necessary to offer advanced services. The existence of technologies capable of providing advanced services while by-passing the ILECs’ local loops (such as fixed wireless and satellite technologies) in no way obviates the need of wireline advanced services competitors for unfettered access to copper loops. Ensuring access to the facilities and services necessary to provide advanced telecommunications services must be the primary goal of the Commission in meeting its statutory obligation to encourage “the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”<sup>2</sup>

**A. The ILECs are the incumbents of advanced services by virtue of their control of the copper loops of the “last mile.”**

In their comments, the ILECs claim that they are not incumbents in the advanced services market and therefore, as new entrants to the advanced services market, should not be subject to the obligations imposed by the Act on incumbents.<sup>3</sup> The ILECs claim that because there are

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*of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, FCC 98—187 (filed September 14, 1998) (“U.S. West’s Comments”).*

<sup>2</sup> 47 U.S.C. § 706(a) (1996).

<sup>3</sup> See e.g., Bell Atlantic’s Comments at 4-6 (claiming that the Commission’s assumption that the Bell companies are entrenched incumbents is erroneous and that ILECs are not monopolists because they are new

*(footnote continued to next page)*

vehicles for the deployment of advanced telecommunications capability besides the provision of such services over copper loops, the ILECs cannot reasonably be viewed as being a “bottleneck” or as having an “essential facility” for advanced telecommunications capability.<sup>4</sup> The ILECs therefore conclude that a de-regulatory policy is not only appropriate—but necessary—to ensure competition for advanced services.<sup>5</sup>

The ILECs are wrong on all counts. First, the ILECs are the incumbents in the advanced services market because they control one of the—if not the single—most important element for the provision of advanced services, the copper loops of the “last mile.” As pointed out by AT&T, virtually 100 percent of American consumers and small business customers can access high-speed, long-haul data networks, including the Internet, only through the twisted pair copper wires controlled by the ILECs.<sup>6</sup> Transwire, for instance, requires unencumbered copper loops to

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entrants into the high-speed data markets); BellSouth’s Comments at 6 (maintaining that “the ILECs’ ownership of local exchange facilities confers no incumbency advantage for advanced services”); Ameritech’s Comments at 5-6 (“ILECs are neither dominant—nor even significant—providers” of advanced services and “[s]ection 251(c) unbundling and resale requirements, and LATA restrictions should not be applied to the deployment of advanced telecommunications capabilities”).

<sup>4</sup>

*See, e.g.,* Ameritech’s Comments at 15 (“[n]either cable modems nor any of the high bandwidth spectrum-based vehicles needs the ILEC loop or POTs backbone ... [t]hus, the ILECs have no ‘bottleneck’ in new infrastructure investment, and should not be regulated as if they do”); U.S. West’s Comments at 20 (technological convergence “prevents one competitor from having bottleneck control of the ‘last mile’ to end users—the only source of leverageable market power that could possibly serve as a predicate for continued regulation”).

<sup>5</sup>

*See, e.g.,* BellSouth’s Comments at 43 (“[i]n the absence of regulatory relief, the Commission will directly or indirectly inhibit the offering of advanced services by interjecting its administrative processes between technology and its marketplace applications, making the ILECs less effective competitors in the market”); SBC’s Comments at 8 (“[t]he Commission should engage in rulemaking to modify its rules to relieve ILECs’ advanced services from dominant treatment”); Ameritech’s Comments at 12-16 (asserting that because “regulation is a key reason” why advanced telecommunications services are not being deployed in a reasonable and timely manner, the Commission should forbear from regulation of advanced telecommunications capability, including the unbundling obligations of section 251(c)); Bell Atlantic’s Comments at 10-13 (arguing that regulation of advanced technology deployed by telephone companies will delay deployment).

<sup>6</sup>

*See* Comments of AT&T, CC Docket No. 98-146, *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, FCC 98—187 at 6 (filed September 14, 1998) (“AT&T’s Comments”). AT&T goes on to say that “[t]here can be no serious

*(footnote continued to next page)*

provide advanced services using its Consumer Digital Modem (“CDM”) technology. Accordingly, without access to the ILECs’ copper loops, competitors such as Transwire will be locked out of the marketplace.

Notwithstanding the ILECs’ obvious incumbent advantage arising out of their control of the “last mile” of connectivity, the ILECs attempt to pawn their incumbent status—and the regulatory obligations associated therewith—off on other providers of advanced services, most notably the cable providers. The ILECs point to the existence of non-wireline technologies capable of last mile connectivity to advanced data services, such as fixed wireless, satellite-based technologies and hybrid fiber/coax cable networks, to support their claim that they should not be treated as incumbents in the advanced telecommunications services market.<sup>7</sup> The existence of these other types of technologies does not, however, in any wise reduce the need for access to copper loops by wireline advanced service providers. The existence of actual or potential competitors utilizing technologies capable of by-passing the ILECs’ local facilities does not lessen the importance of the “last mile” to those market entrants ready and able, with access to the necessary facilities, to deploy wireline advanced services on a widespread basis in the near future.

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*(footnote continued from previous page)*

dispute that ‘last mile’ connections are the most significant bottleneck restricting widespread access to advanced telecommunications capability.” *Id.* at 6-7.

<sup>7</sup>

See Ameritech’s Comments at 7 (“ILEC-supplied loop access should not be the sole—or even a significant—hope for ubiquitous telecommunications service deployment” as “other loop access sources, including cable and wireless loops, are also key sources of ‘last mile’ access”); Bell Atlantic’s Comments at 4-8 (identifying cable operators as the incumbents in advanced services and further describing wireless, satellite and utilities as other market competitors). See also BellSouth’s Comments at 17-31 and U.S. West’s Comments at 5-14 (describing the advanced services deployment of other entities—including cable operators, interexchange service providers, competitive LECs, satellite service providers, wireless cable operators, local multipoint distribution service providers, and commercial mobile radio service providers—as support for their position that the ILECs are not dominant providers of advanced services).

For example, Bell Atlantic maintains that cable companies are the incumbents of advanced services, insofar as cable companies are ahead of the ILECs in deploying advanced technology.<sup>8</sup> Regardless of who in fact is winning the race to deploy advanced telecommunications capability, it is the ILEC that controls the copper loops necessary for competitors such as Transwire to provide advanced services. Moreover, AT&T explains that new entrants providing, or planning to provide, advanced services over cable networks still must interconnect with the ILECs in order to exchange traffic and provide customers with the connectivity required under the 1996 Act.<sup>9</sup> Transwire emphasizes that the existence of another potential provider of advanced services such as a cable company does not reduce the need for access to copper loops.

The Commission itself impressed upon commenters that adequate access to the “last mile” is critical to ensure that a variety of providers are able to offer the full range of advanced services that consumers demand.<sup>10</sup> Indeed, Americans’ ability to take advantage of advanced telecommunications capability is constrained by the bottleneck “last mile,” not a shortage of “backbone” facilities. Significantly, the comments submitted in response to the *NOI* reflect that established interexchange carriers and new entrants have constructed or upgraded powerful networks and are attracting significant amounts of new capital with which to increase further

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<sup>8</sup> Bell Atlantic’s Comments at 4-6.

<sup>9</sup> AT&T’s Comments at 31. There is also evidence that providing advanced services over cable networks is more costly than providing such services over the ILECs’ facilities. See AT&T’s Comments at 12-13 (explaining that while ILECs need only add relatively inexpensive electronics to their existing loops and central office equipment in order to upgrade their systems for xDSL, cable providers must reconfigure their networks by building out fiber and upgrading the coaxial cable in their existing cable plant”).

<sup>10</sup> See *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, et. al.*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CC Docket Nos. 98-147, *et al.*, FCC 98-188 (rel. August 7, 1998).

their capacity.<sup>11</sup> The Commission should therefore focus on ensuring that access to the local loop and provision of copper wireline advanced technologies are available at just and reasonable rates, terms and conditions.

While the Commission should also encourage technologies which by-pass, at least in part, the ILECs' local network, it is equally critical for the Commission to promulgate regulations that promote continued technological advancements to increase capacity over the copper loop.<sup>12</sup> Because ILECs control these essential facilities, the Commission must reject summarily the ILECs' claims that they are not incumbents in the advanced services market and treat the ILECs as incumbents for purposes of promoting the deployment of advanced telecommunications capability.

In sum, despite the ILECs' claims that "[t]he Commission's focus on the 'last mile' of copper wire is misguided and ultimately harmful,"<sup>13</sup> the Commission must ensure that appropriate safeguards are in place to ensure access to the copper facilities of the "last mile," if competition in the advanced services market is ever to flourish.

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<sup>11</sup> See AT&T's Comments at 18-23 (detailing the increased and wide-spread backbone deployment by AT&T and other carriers); Comments of Sprint Communications, CC Docket No. 98-146, *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, FCC 98—187 at 6 (filed September 14, 1998) ("Sprint's Comments") (stating that it is unaware of any data to suggest that congestion in using the Internet is due to a shortage of Internet backbone); Joint Comments of WorldCom and MCI, CC Docket No. 98-146, *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, FCC 98—187 at 19-21 (filed September 14, 1998) ("Joint Comments of MCI and WorldCom") ("[c]ontrary to ILEC allegations, there is no shortage of long-haul backbone capacity outside local networks nor is there any evidence of underinvestment in Internet facilities).

<sup>12</sup> For instance, while ISDN was the progenitor of xDSL technology, future wireline advanced technologies should not be impeded.

<sup>13</sup> Bell Atlantic's Comments at 3. See also Ameritech's Comments at 9 ("by focusing regulation on ILEC-provided traditional loops, the Commission is creating economics that will hamper the development of non-ILEC, nontraditional loop technologies).

**B. Regulation is necessary to deter the anti-competitive practices currently impeding the deployment of advanced telecommunications capability.**

As reflected in the comments submitted in response to the *NOI*, there is a general consensus among competitors that the rate of deployment of advanced telecommunications capabilities is being impeded by the anticompetitive practices of the ILECs.<sup>14</sup> Competitive LECs are in agreement that the promotion of advanced telecommunications capability can only be accomplished through strict adherence to the Commission's directive to apply the incumbent LEC obligations of section 251(c)<sup>15</sup> in the advanced telecommunications context.<sup>16</sup> Transwire agrees that competition will only flourish if the Commission heeds its statutory obligation to enforce the ILECs' obligations under section 251(c) in the advanced telecommunications market.

The ILECs contend that the Commission should forbear from imposing the unbundling and wholesale discount obligations on ILECs for advanced telecommunications capability.<sup>17</sup> The ILECs should not be allowed, however, to preserve for themselves the ability to monopolize the local market for advanced services by thwarting competitors' efforts to enter the market. The Commission must hold firm in its resolve not to forbear from section 251(c) in the advanced

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<sup>14</sup> See, e.g., AT&T's Comments at 26-32 (citing the ILECs' refusal to provide nondiscriminatory, cost-based access to UNEs, collocation, resale at viable wholesale rates, and OSS interfaces, as well as the ILECs' imposition of anti-competitive restrictions on the use of combinations of UNEs, as a deterrent to deployment of advanced telecommunications capabilities); Joint Comments of MCI and WorldCom at 4 ("[c]ompetitive local exchange carriers (CLECs) are unable to get open, affordable access to unbundled local loops, collocation space and subloop elements ... [i]n order to prevent the creation of a 'digital monopoly', the Commission should require ILECs to abide by the Act and provide competitors with elements critical to the provision of traditional and advanced services").

<sup>15</sup> 47 U.S.C. § 251(c) (1996).

<sup>16</sup> See, e.g., AT&T's Comments at 26-32; Joint Comments of MCI and WorldCom at 4.

<sup>17</sup> See, e.g., Ameritech's Comments at 12-13 ("[t]he Commission can and should find that it is not necessary to require unbundling of an incumbent's advanced capability"); SBC's Comments at 3 ("[t]he unbundling and wholesale discount obligations will continue to 'severely dampen an ILEC's incentives to deploy advanced services'").

telecommunications context. As evidenced by the ILECs' current practices, market forces alone cannot replace regulation as competition evolves in the advanced services marketplace.

The Commission must also reject any assertion that regulation will delay rather than promote attempts to roll out new telecommunications technology. For example, U.S. West takes issue with the Commission's requirement that ILECs offer their advanced service facilities either at cost on an unbundled basis or the services themselves for resale at a discount.<sup>18</sup> U.S. West claims that this requirement deters or eliminates the network providers' incentives to innovate and discourages rivals from investing in their own facilities.<sup>19</sup> Transwire is not requesting the ILECs share an "innovation" but merely asking that they make available the network which already exists, or the services which are already provided. ILECs should not be allowed to thwart access to their local loops, thereby requiring competitors to develop new technologies and construct by-pass facilities.

Moreover, insofar as the ILECs' facilities and services still must be purchased, there is an incentive for competitors to develop technologies to by-pass the network. Indeed the realization of fair competition is the greatest incentive for ILECs to invest and innovate in advanced telecommunications services. As noted in the comments, despite having the requisite facilities and financial capability, the ILECs only began rolling out xDSL services in those areas where competitors were finding ways to offer high-speed data capabilities.<sup>20</sup> Having now entered the market, the ILECs should not be allowed to try to foreclose their competitors' ability to compete.

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<sup>18</sup> U.S. West's Comments at 26-27.

<sup>19</sup> *Id.* See also BellSouth's Comments at 42-43 ("[r]egulation that fetters the ILECs ... harms the public by denying all consumers the benefit of services that could be 'widely and efficiently available' through the local exchange provider"); Bell Atlantic's Comments at 10 (claiming that regulation of the ILECs will deter rather than promote the deployment of advanced telecommunications services).

<sup>20</sup> See, e.g., Joint Comments of MCI and WorldCom at 18-19.

If the Commission truly seeks to encourage the widespread availability of advanced telecommunications services, it must also preserve the ability of competitors to purchase from ILECs advanced telecommunications services for resale at wholesale discounts. Ameritech claims that the Commission should forbear from requiring ILECs to offer resale of advanced telecommunications for resale.<sup>21</sup> In Ameritech's opinion, mandatory advanced telecommunications services would "discourage innovation by the ILECs because it would deprive them of the opportunity to offer unique services."<sup>22</sup> The ILECs are not, however, the only parties capable of developing new advanced telecommunications capabilities. On balance, Transwire believes that it is more important to ensure the widespread deployment of advanced services through resale, and more specifically resale at wholesale discounts, than to bolster the ILECs' perceived notion of unique expertise in this area.

In sum, while Transwire does not seek to impose formidable regulatory barriers upon the ILECs, Transwire must, at minimum, seek to preserve its statutory right to obtain access to the elements and facilities necessary for it to provide advanced telecommunications services and to obtain advanced services for resale at wholesale rates. As the goal of sections 251<sup>23</sup> and 271<sup>24</sup> is to promote competition in the local exchange market, including the market for advanced services, Transwire believes it is incumbent upon the Commission not to forbear from regulation until the advanced telecommunications market is genuinely open to competition. That is, only when sections 251 and 271 have been fully implemented should the Commission consider forbearance from regulation.

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<sup>21</sup> Ameritech's Comments at 13-14.

<sup>22</sup> *Id.*

<sup>23</sup> 47 U.S.C. § 251 (1996).

<sup>24</sup> 47 U.S.C. § 271 (1996).

## **II. Conclusion**

To encourage the long-term deployment of advanced telecommunications capabilities, the Commission must undertake only those actions that to foster fair competition and technological advancement.

Respectfully Submitted,

TRANSWIRE COMMUNICATIONS, INC.

By: Randall B. Lowe

Randall B. Lowe

Julie A. Kaminski

Renée Roland Crittendon

J. Todd Metcalf

PIPER & MARBURY L.L.P.

1200 Nineteenth Street, N.W.

Washington, D.C. 20036-2430

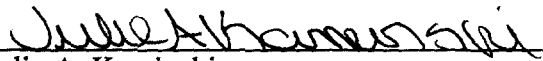
(202) 861-3900

Its Attorneys

Dated: October 8, 1998

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Reply Comments of Transwire Communications, Inc. was sent via hand-delivery to the individuals on the attached service list, this 8<sup>th</sup> day of October, 1998.

  
\_\_\_\_\_  
Julie A. Kaminski

## SERVICE LIST

Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, DC 20554

Honorable Gloria Tristiani  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W.  
Room 826  
Washington, DC 20554

Honorable Harold Furchtgott-Roth  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Mr. A. Richard A. Metzger, Jr.  
Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 500  
Washington, DC 20554

Mr. Lawrence E. Strickling  
Deputy Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 500  
Washington, DC 20554

Honorable Susan Ness  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W.  
Room 826  
Washington, DC 20554

Honorable Michael K. Powell  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W.  
Room 844  
Washington, DC 20554

Ms. Magalie Roman Salas  
Secretary  
Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Ms. Linda Kinney  
Attorney Advisor  
Policy and Programming Planning Division  
Federal Communications Commission  
1919 M Street, N.W.  
Room 538  
Washington, DC 20554

Mr. Richard K. Welch  
Deputy Bureau Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 500  
Washington, DC 20554

Ms. Janice M. Myles  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 539-A  
Washington, DC 20554

Mr. Jonathan Askin  
Attorney Advisor  
Policy and Programming Division  
Federal Communications Commission  
1919 M Street, N.W.  
Room 544  
Washington, DC 20554

Mr. Paul Misener  
Chief of Staff  
Senior Legal Advisor  
Federal Communications Commission  
1919 M Street, N.W.  
Room 802  
Washington, DC 20554

Mr. John Nakahata  
Chief of Staff  
Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, DC 20554

Mr. Paul Gallant  
Legal Advisor  
Federal Communications Commission  
1919 M Street, N.W.  
Room 826  
Washington, DC 20554

Mr. Peyton Wynns  
Chief  
Industry Analysis Division  
Common Carrier Bureau  
1919 M Street, N.W.  
Room 500  
Washington, DC 20554

Mr. Jim Casserly  
Senior Advisor  
Federal Communications Commission  
1919 M Street, N.W.  
Room 832  
Washington, DC 20554

Mr. Thomas Power  
Legal Advisor  
Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, DC 20554

Mr. Kevin Martin  
Legal Advisor  
Federal Communications Commission  
1919 M Street, N.W.  
Room 802  
Washington, DC 20554

Mr. James D. Schlichting  
Deputy Bureau Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 518  
Washington, DC 20554

Mr. Kyle D. Dixon  
Legal Advisor  
Federal Communications Commission  
1919 M Street, N.W.  
Room 844  
Washington, DC 20554

Ms. Carol E. Matthey  
Chief  
Policy and Program Planning Division  
Federal Communications Commission  
1919 M Street, N.W.  
Room 544  
Washington, DC 20554

**Ms. Edie Herman  
Communications Daily  
2115 Ward Court, N.W.  
Washington, D.C. 20037**

**Mr. Jeffrey C. Williams  
Telecommunications Reports  
1333 H Street, N.W., 100-East  
Washington, DC 20005**